United States Department of Agriculture
Agricultural Adjustment Administration

August 30, 1935

DETAILED OUTLINE OF AAA AMENDMENTS
(Public No. 320, enacted August 24, 1935)

I. CONSTITUTIONALITY

1. Delegation of authority

a. In general, throughout the Act as amended, the Secretary of Agriculture is directed, not authorized, to investigate the facts and to put into effect certain specified corrective measures if the investigation shows that certain conditions exist. He may use his discretion only in making a choice, based on standards expressed in the Act, among the several corrective measures specified by Congress.

b. The conditions under which the corrective measures authorized by Section 8 (adjustment agreements, removal of surplus, expansion of markets, etc.) may be applied are:

(1) That prices are below fair exchange value, or are likely to be below during the period in which the production of the current or next marketing year is normally marketed.

(2) That such proposed corrective measure or measures would be practicable and effective in raising producer prices.

c. The corrective measures that may be used are:

(1) Adjustment in acreage or production, with rental or benefit payments.

(2) Payments for removal of surplus.

(3) Payments for expansion of domestic or foreign markets.

(4) Payments for production under a domestic allotment.

d. Funds equivalent to the proceeds of all processing taxes are appropriated by Congress for these payments, for the acquisition of commodities under the Ever-Normal Granary plan, for administrative expenses, and for tax refunds. (A separate procedure

is set forth for collecting funds to meet administrative expenses in connection with marketing agreements and orders.)

e. The Secretary is directed not to initiate a program, and to discontinue an existing program at the end of the marketing year current at the time, when investigation shows that the conditions specified above do not hold true.

f. Rates of taxes, legal and administrative procedure in connection therewith, penalties for violations, legal procedure for redress, the terms which may be included in and, methods and procedure for marketing agreements and orders - these and other matters are set forth in detail by Congress in the amendments.

2. Interstate commerce

a. It is made clear throughout the amended Act that orders and marketing agreements can apply only to commodities and operations which are "in the current of interstate or foreign commerce, or which directly burden, obstruct, or affect interstate or foreign commerce." This wording is in line with previous Supreme Court decisions.

b. In order to obtain uniformity in Federal and state programs, the Secretary is directed to confer with State authorities at their request, and authorized to cooperate with them, and to furnish them with information which, however, must be held confidential.

3. Legalizing previous acts

a. It is provided that existing tax rates for specified commodities are to be in effect until December 31, 1937 (July 31, 1936 in the case of rice) with suitable provisions for flexibility as commodity prices rise or fall.

b. In case the provisions for flexibility are held invalid, existing tax rates are to remain in force.

c. Taxes imposed prior to the date of the adoption of the amendments, as well as rental and benefit payments, adjustment programs, agreements with producers, and other voluntary methods, are legalized, ratified, and confirmed by Congress.

d. A saving clause provides that nothing in the Act shall be construed as invalidating any existing marketing agreement, license, or adjustment program, with a limiting date in the case of adjustment programs of July 1, 1937.

II. STRENGTHENING, CLARIFYING, AND CORRECTING THE ACT

1. Parity price

The term "fair exchange value" expresses the relationships between the price of what a farmer sold and the price of what he bought in the base period. For all commodities except potatoes and tobacco, the base period is 1909-1914.

The purpose of the Act is to raise farm prices to this value. When a commodity reaches this level, its price is at parity.

The amendments add another element to this conception of fair exchange value, namely, the relation between the farmer's present mortgage-interest and land-tax rates and the rates that prevailed in the base period, if that period is 1909-1914.

In effect, this means that these fixed charges are to be included in comparing farm costs today with those in the base period. This would affect parity prices, and therefore tax rates. But the amendments provide that existing tax rates need not be modified to take care of this factor.

2. Payments for other purposes

As mentioned under I c above, payments "in fair and reasonable amounts" are authorized to remove a surplus from the normal channels of trade and commerce, to expand domestic or foreign markets, and "in connection with that part of any basic agricultural commodity which is required for domestic consumption."

3. Tax rates

a. Flexibility

In general, the processing tax is to be at a rate that equals the difference between the current average farm price and the fair exchange value of a commodity. The amendments authorize an addition of not more than 20 percent to this amount, to cover estimated credits, refunds, and exemptions.

A reduction in the rate is directed if investigation shows that the existing rate results in accumulation of surplus stocks or in depressing prices.

Thereafter the rate may be raised again if circumstances warrant

As mentioned under I 3 a above, it is specified that existing tax rates for wheat, cotton, field corn, hogs, peanuts, tobacco, paper, jute, sugarcane and sugar beets are to continue in effect

for specified periods (none later than December 31, 1937), a tax at a fixed rate for rye is set for a specified period, and a rate is set for barley provided a tax comes into effect.

These specific tax rates may be increased or reduced (including a decrease to zero) and later increased, in accordance with prescribed formulae.

If, during the 2 months preceding and the 10 months following the beginning of a marketing year, the average farm price of one of these specified commodities equals parity, or exceeds parity by 10 percent or less, the tax rate shall be adjusted at the beginning of the next marketing year to 20 percent of parity. In the case of tobacco, this shall also be done if the current average farm price is 90 to 100 percent of the parity price.

If the current average farm price is 10 to 20 percent over parity during such a period, the tax rate shall be similarly adjusted to 15 percent of the parity price.

If the current average farm price exceeds parity by more than 20 percent during such a period, the tax rate shall be adjusted to 10 percent of parity.

These provisions for continuing a tax after prices reach parity do not apply after December 31, 1937 (or July 31, 1936, in the case of rice). After these dates, tax rates are to be determined in accordance with the regular formulae provided in the amended Act.

Any one of these specified taxes may be terminated by proclamation as prescribed in the Act, and may again be made effective following a new proclamation.

As noted in <u>II 3 a</u> above, if the provisions for flexibility are held invalid, the tax rates set by Congress are to continue in effect.

b. <u>Smoother operation</u>

Partly for the sake of smoother operation, many detailed technical amendments are made covering processing, floor stocks, and compensating taxes.

Certain general provisions of the revenue laws are made applicable to all suits to recover taxes.

Obtaining refunds for commodities used for charitable purposes, or going into export trade, is facilitated.

Provision is made for remission of compensating taxes to importers of low-value products, when the tax on the domestic product has been suspended.

Provision is made for refund of the floor stocks tax to retailers of wheat products and cotton products in case of termination of the processing tax.

c. Refund, recovery, and credit.

Similarly, many detailed technical provisions are made covering tax refunds and credits, and the recovery of taxes. Chief of these are:

(1) A 120-day limit for the filing of claims to refund, credit, or abatement.

(2) Twenty-five percent of a tax must be paid when due, on processing; payment of the other 75 percent may be postponed for not more than 180 days; but payment of the whole tax may be postponed for 180 days when taxes are paid each month on the amount of a (stored) commodity that was marketed in the preceding month.

(3) The Commissioner of Internal Revenue may require a taxpayer to file his return and pay his tax in his local revenue district, and to keep adequate records to show whether he is liable to a tax.

(4) No suits may be brought to restrain the collection of a tax. The tax must be paid, and the taxpayer may then obtain redress by suing for a refund. This is to prevent needless tying up of a program by litigation.

(5) A suit to recover taxes will be allowed only when the plaintiff satisfies the Commissioner of Internal Revenue that he has not (a) included the tax in the price of the article, or (b) passed any part of it on to the buyer, or (c) included any part of it in the charge or fee for processing, or (d) paid a reduced price for the article because of the tax. Provision is made for court review of the Commissioner's determination on the basis of the record made before him.

A one-year limit is set on the filing of a claim for refund. But in the case of claims based on unconstitutionality or illegality cannot begin until a year after the claim for refund is filed with the Commissioner of Internal Revenue, unless the Commissioner renders a decision within that time. Also, suits based on such a claim are outlawed after 5 years from the date of the tax payment, unless the suit was begun within 2 years after disallowance by the Commissioner.

The Commissioner of Internal Revenue is authorized to examine the books and records of the plaintiff, take testimony, examine witnesses, et cetera, in connection with a claim for recovery of taxes; his evidence may be used in court; and information so obtained shall be available to the Secretary of Agriculture on written request.

4. Ever-Normal Granary

The ever-normal granary plan contemplates the holding of reserve supplies of certain food, feed, and fiber crops in storage on farms, to tide over periods of shortage, and to protect both farmers and consumers from undue price fluctuations. In other words, it would enable the country to maintain a relatively even supply of these products from year to year.

The plan is incorporated in the farm program through these provisions:

a. The Secretary may acquire agricultural commodities pledged as security on government loans (conditioned upon compliance with an adjustment program) with funds made available under the Agricultural Adjustment Act.

b. With the producer's consent, the Government may then turn possession of the product over to him in lieu of a cash benefit payment in connection with an adjustment program.

The farmer would then have a supply of the crop on hand from the previous season, and would save the expense and labor of growing and harvesting it during the current season. His crop adjustment during the current season would take account of the reserve supply.

5. Imports and Exports

a. Control of Imports

The amendments provide that when competing imports materially interfere with any program under the Agricultural Adjustment Act, the President may limit the quantity imported, and later either suspend or modify the limitation to fit changed conditions. But no limitation can be imposed which limits the quantity to less than 50 percent of the average amount imported from any country annually between July 1, 1928 and June 30,1933.

b. Export Subsidy

As noted under I 1 c and II 2 above, one amendment provides for payment from funds appropriated by the Act to subsidize exports.

Another provision appropriates 30 percent of the gross receipts from customs duties annually for

(1) Encouraging exports.

(2) Encouraging domestic consumption by diverting surpluses from the normal channels of trade or commerce.

(3) Financing production adjustments.

No part of this fund, however, may be used to subsidize the export of raw cotton; and payments under heading (3) are prohibited unless it is unnecessary to make payments under (1) or (2).

6. Marketing Agreements and Orders

a. Commodities

Marketing agreements are authorized for "any agricultural commodity or product thereof," but orders to enforce marketing agreements may be issued only for the following commodities:

Milk and its products.
Fruits and their products.
Including pecans and walnuts.
Not including apples.
Not including fruits for canning, except olives.
Tobacco and its products.
Vegetables and their products.
Not including vegetables for canning, except asparagus.
Soybeans and their products.
Naval stores.
Including refined and partially refined oleoresin, but not products of naval stores.

b. Method of Enforcement

Formerly, handlers were licensed to do business under the terms of the license. A handler was liable to suspension of his license for violations.

The licensing method is eliminated by the amendments. Instead, handlers are subject to administrative "orders" identical with the terms of an associated proposed or executed marketing agreement.

Handlers of at leat 50 percent of the volume of the commodity affected (or 80 percent in the case of California citrus fruits) must have signed a marketing agreement, and two-thirds by number or volume of the producers (three-fourths in the case of California citrus fruits), must have approved issuance of the order, before an order can be issued.

However, if handlers of 50 percent of the volume do not sign, they may be overruled under certain conditions; that is, orders may be put into effect with the consent of the President:

(1) If this action is favored by two-thirds of the producers by number or volume (three-fourths in the case of California citrus fruits).

(2) If the noncompliance of the handlers would tend to preven achieving the purpose of the Agricultural Adjustment Act.

(3) If such action is the only practical means to advance the interests of the producers.

c. Terms and Conditions--Commodities other than Milk

For commodities other than milk and its products, these orders may contain terms and conditions for:

(1) Limiting the total quantity that may be marketed by all handlers.

(2) Allotting the quantity each handler may purchase from or handle on behalf of any and all producers.

(3) Allotting the quantity each handler may market.

(4) Controlling and disposing of surplus.

(5) Establishing reserve pools.

(6) Prohibiting unfair competition and unfair trade practices.

(7) Posting of sale prices by handlers.

(8) Appointing an administrative agency to:

(a) Administer orders.
(b) Make rules and regulations.
(c) Investigate complaints of violations.
(d) Recommend amendments.
(e) Exercise necessary incidental powers.

d. Terms and Conditions for milk and its Products

(1) Classifying milk and fixing uniform minimum prices to be paid by handlers for each classification, subject to certain specified adjustments; and also setting the time when payment shall be made.
(This determines the total payment by all handlers for all milk).

(2) (a) Payments of a uniform price to producers by all handlers for all milk delivered, subject to certain

specified adjustments (including those involved in what is known in the milk industry as the "base surplus" plan, when this plan is used).

(b) The pool method of distributing the total sum paid by handlers--either:

(i) Individual distributor pool. Each handler pays a uniform price to his producers for all milk delivered to him. (This method must be approved by three-fourths of the producers by number or volume, except when it applies to milk products only.)

(ii) Market-wide pool. All handlers pay a uniform price to all producers, irrespective of the uses made of the milk by individual handlers.

(3) Making adjustments in payments among handlers (necessary under a market-wide pool) through an equalization accoun

(4) Requiring that payments to a new producer, during his first 2 months in the market, be at the established price for the lowest use-classification.

(5) Providing for market information, verification of weights, sampling, testing, and security for payment where not otherwise furnished by qualified cooperatives, and providing deductions for these services.

(6) Permitting qualified cooperative marketing associations to pay their members according to member contracts.

(7) Prohibiting unfair competition and unfair trade practices.

(8) Preventing any prohibition against milk or discriminatio against milk and milk products coming into a marketing area because of the place of production. (But for the first 2 months, it would be subject to rule (4) above.)

(9) Posting of sale prices by handlers, except for milk and cream destined for consumption in fluid form.

(10) Appointing or selecting an administrative agency. See (Sec. (8) under Commodities other than milk.)

e. Expenses

Administrative expenses in connection with orders are to be paid by handlers on a pro rata basis, and handlers may be sued for collection of these expenses.

f. Limitations --

Orders and marketing agreements cannot regulate advertising.

Orders must have as small a regional application as possible, except in the case of milk and its products. They shall not be applicable to a producer in his capacity as a producer.

They shall not be applicable to a retailer in his capacity as a retailer, except in the case of milk and its products.

g. Violations, penalties, legal recourse.

(1) A penalty of $50 to $500 is provided for each violation of an order, with each day counted as a separate violation.

(2) A handler may protest the illegality of an order by written petition and pray for modification or exemption. The Secretary of Agriculture must then hold a hearing and make a ruling. The district court is empowered to review this ruling if a bill in equity is filed within 20 days. The decision of the court is binding on the Secretary of Agriculture.

(3) Relevant books and records may be examined by the Secretary in order to determine (a) the extent to which an agreement or order has been carried out. (b) the extent to which it has been effective in achieving the purposes of the Act, (c) whether the privilege of exemption from the anti-trust laws has been abused. Information so obtained must be kept confidential by employees under penalty of dismissal and a $1000 fine.

h. Termination

A marketing agreement or order shall be terminated at the end of the current marketing year when this action is favored by a majority of producers.

i. Base period

The Agricultural Adjustment Act specifies that the base period for all agricultural commodities except tobacco shall be the prewar period, 1909-1914. However, if the purchasing power of a commodity affected by a marketing agreement or order cannot be satisfactorily determined for this base period, then the post-war period, August 1919-July 1929, or a portion thereof, may be set as the base period, with which to compare current purchasing power.

7. Provisions for specific commodities.

a. Cotton

Amendments to the Agricultural Adjustment Act, affecting cotton specifically, and to the Bankhead Act, include:

Authorizing the Secretary to sell cotton at discretion; to enter into option contracts with producers; to sell to or for them at whatever price seems advisable; to make such options transferable or assignable.

Validating assignments of option contracts made in good faith prior to January 11, 1934.

Extending the period for which the $100,000,000 fund is available in connection with cotton options from March 1, 1935 to the date when all cotton now held in the pool is finally marketed.

Authorizing use of funds from sale of cotton to meet administrative and other expenses of handling.

Extending application of the Bankhead Act to the crop years 1936-37 and 1937-38, and providing that a favorable vote of two-thirds of the producers actually voting shall be a sufficient basis for continuing the Act.

Providing that no State shall receive an allotment of less than 200,000 bales if in any year of the previous 5 years its production has equaled 250,000 bales.

Ratifying the action setting 10,500,000 bales as the national allotment for 1935-36, as well as apportionments connected therewith.

Directing that allotments for years prior to 1934-35 be (1) the full amount of production for farms producing less than 956 bales in the base period, and (2) not less than 956 bales for farms producing more than that amount in the base period; and that any additional amounts called for by this rule shall be added to the allotments made for crop years following 1935-36, with corresponding adjustments in the county, State, and national allotments.

Authorizing payment of 25 cents a bale for additional ginning expenses, where incurred in connection with administration of the Act.

Authorizing transfer of tax exemption certificates by a producer to another producer resident in the same state.

Authorizing exemption of 110 lbs. of lint cotton from the tax, for use in the household of the producer.

b. Tobacco

Amendments to the Kerr Tobacco Act include:

Amending the title to make clear that the Act is intended to raise revenue.

Extending the operation of the Act to April 30, 1939; and revising the referendum provisions.

Authorizing tax exemption warrants for persons who cannot sign contracts because of religious or moral scruples.

Redrafting the tax warrant provision to cover constitutionality.

Authorizing the voiding of a tax exemption warrant for noncompliance with any agreement, rule, or regulation under the Agricultural Adjustment Act or the Kerr Tobacco Act, and making the violator responsible for payment of the tax.

Authorizing the Commissioner of Internal Revenue to require returns and information from producers, warehousemen, processors, and common carriers, and providing a $1000 penalty for failure to file a return.

Authorizing agents of the Secretary of Agriculture to administer oaths in connection with execution of forms.

Making revenue collected under the Kerr Tobacco Act available for tobacco adjustment programs under the Agricultural Adjustment Act.

Extending the period for filing claims for tax refunds to 1 year instead of 6 months.

Providing for a 30-day period for producers to sign contracts after proclamation that tax is to be effective.

c. Rye, barley, rice

A processing tax rate is set for rye at 30 cents per bushel of 56 lbs. for the period September 1, 1935 - December 31, 1937, but floor stocks taxes do not apply.

A processing tax rate is set for barley at 25 cents per bushel of 48 lbs. to December 31, 1937, if a program for this crop goes into effect before that date. Floor stocks taxes do not apply.

The program for sugar beets and sugar cane is extended to December 31, 1937.

e. Potatoes

An adjustment program for potatoes is included in Public No. 320 with the following provisions:

(1) Tax

A tax is levied on the first sale of potatoes harvested after December 1, 1935 to be paid by the seller at the rate of three-fourths of a cent per pound. However, exemptions from this tax are to be established that will be distributed amongst growers and which will exempt them from the payment of this tax for an amount equivalent to their tax exempt sales allotment. On sales in excess of this exempt allotment, the tax is to be paid through the purchase of stamps from collectors of internal revenue and postoffices. The tax exempt stamps are to be distributed by the Agricultural Adjustment Administration. The tax rate is three-fourths of a cent per pound but may be reduced if this rate tends to affect the market adversely depress prices, or cause an excessive shift to consumption of other commodities. Producers are to vote at least thirty days prior to the beginning of each allotment year (after the first allotment year) as to whether the tax should be continued. A favorable majority vote is necessary for its continuance.

(2) Parity Price

The base period for calculating the parity price of potatoes is the post-war period, August 1919 - July 1929.

(3) Allotments

A tax exempt national allotment for each year is to be ascertained by the Secretary of Agriculture, with a view to establishing prices near parity without reducing the total net income to producers below their largest probable net income for that year, and without creating competitive disadvantages.

The antional allotment is to be apportioned among states according to a formula based on their percentage of the national production in the 4 years of highest acreage and yields from 1927 to 1934 inclusive, with a possible 2 percent of the allotment to be used in adjusting discrepancies between states.

Ninety-five percent of the state allotment is to be apportioned among old-producers, that is, among farms on which potatoes have been grown in any year from 1932 to 1934. The apportionment is according to a formula based on production and sales in one or more selected years during this period.

The remaining 5 percent of the state allotment is available for apportioning to new producers on a fair and just basis. After the first year, new producers get their apportionment from the 95 percent mentioned above.

Tax exemption stamps are to be issued to each producer for the amount of his allotment. (That is, the tax will actually be paid only by those who do not cooperate in the program and therefore do not receive an allotment, and by cooperators for whatever they sell over their allotment.)

Tax exemption stamps are to be valid during a marketing period determined for each producing region. They may be transferred or assigned, subject to certain regulation and they are exempt from claims of creditors. Interests of share-tenants and share-croppers are to be protected.

(4) Packaging

To facilitate collection of the tax, all potatoes are to be packaged in accordance with rules and regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury, and stamps affixed to the package. Packaging may be postponed for potatoes to be stored in bulk or graded.

(5) Rules and regulations

Necessary rules and regulations as to tax stamps and tax-exemption stamps shall be prescribed and published by the Commissioner of Internal Revenue and the Secretary of the Treasury; and the Secretary of Agriculture is authorized to make rules and regulations necessary to carry out the powers vested in him. Producers, warehousemen, handlers, et cetera, may be requested to furnish information, make returns and keep records as required, under a maximum penalty of a $1000 fine or imprisonment for one year or both.

(6) Refunds

A time limit of one year is set on the filing of claims for refund of taxes. A suit for refund can be brought

only if a claim is first filed with the Commissioner of Internal Revenue, and then not until 6 months after the filing of the claim (unless the Commissioner renders a decision in the meanwhile), nor more than 2 years after filing.

(7) Appropriation

A sum equal to the proceeds of taxes is appropriated for the program, and advances may be made from the Treasury.

(8) General and penal provisions

Potatoes destined for use in low-value products, or as feed for livestock, may be exempted from taxation and from the requirements for packaging.

Employees to carry out the program may be appointed without regard to the civil service law, and regional, state, and local committees and associations of producers may be established. Funds may be advanced to the fiscal officer of such an association.

Anyone who knowingly sells, offers for sale, buys, or offers to buy potatoes not packaged, or packaged potatoes without tax-exemption or tax stamps, is subject to a maximum fine of $1000, with a year's imprisonment added for a second offense. Specualtion in tax-exemption stamps, or securing stamps by fraud or coercion, is punishable by a $1000 maximum fine or one year in prison.

Stamps on an emptied package must be destroyed by the person possessing the package.

A maximum $1000 fine or 6 months' imprisonment is provided for: 1, any violation; 2, failure to pay a tax when due; 3, making, forging, ordering, or counterfeiting stamps with intent to defraud; 4, using, selling, or possessing any forged, ordered, or counterfeited stamps, or plates or dies therefor; 5, possessing any stamp that should have been destroyed; 6, making, using, selling, or possessing any paper in imitation of the paper or other substance used in the manufacture of stamps; 7, re-using any stamp required to be destroyed; 8, placing potatoes in a used stamped package without destroying the stamps; 9, giving away, accepting, selling, or buying a used stamped package without destroying the stamps; 10, making a false statement in an application for tax-exemption stamps; 11, possessing any stamps obtained illegally.

A fine of $200 is provided for violation of any regulation for which there is no special penalty.

Certain provisions and penalties of the Revenue Act of 1926 are made applicable to potato taxes.

Producers must keep books and records as required, and these shall be open to inspection.

Taxes on potatoes sold without the proper stamps shall be assessed, on proper proof, within 2 years after sale.

(9) Exports and imports

Taxes do not apply to potatoes for export. If paid, refund may be made to the exporter or shipper, if the taxpayer waives his claim.

Quotas may be established for imports, based on the ratio of imports to domestic production during the years 1929-1934. Imports over and above quotas shall be subject to an internal revenue tax, in addition to import duties, equal to the domestic tax. Imported potatoes are subject to the same packaging regulations as domestic potatoes.

Potatoes imported from Cuba between December 1 and the end of February in any year are exempt from restrictions, unless they threaten to depress the market for domestic potatoes unduly.

8. Consumer interests

The amendments provide that (a) the raising of prices to fair exchange value shall be a gradual correction of the current level, and (b) no action shall be authorized which has for its purpose the maintenance of prices above the fair exchange value.

9. Miscellaneous provisions

a. Cooperatives

It is declared to be the policy to encourage producer cooperatives, and provision is made for their full participation in adjustment and marketing programs.

b. Cattle diseases

The sum of $10,000,000, in addition to existing funds is appropriated for the current year to eliminate diseased dairy and beef cattle, including those suffering from tuberculosis and Bang's disease, and for experimentation and efforts to